
OLR Bill Analysis

sHB 6667

AN ACT CONCERNING THE LIABILITY OF AN EMPLOYER WHO DISCIPLINES OR DISCHARGES AN EMPLOYEE ON ACCOUNT OF THE EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS.

SUMMARY:

Under current law, public and private employers are liable to an employee they discipline or discharge for conduct protected by certain constitutional rights, unless the conduct interferes with job performance or the employer-employee relationship. The rights are those guaranteed by the First Amendment to the U.S. Constitution (i.e., freedom of speech, press, religion, and assembly) and similar state constitutional provisions. Employers are liable for damages, including potential punitive damages and reasonable attorney's fees.

This bill eliminates the liability for public employers (i.e., the state, its agencies, and political subdivisions) and thus, the protection public employees currently have under this statute. However, public employees have other protections for their rights (e.g., state whistleblower laws, which protect speech about government misconduct, and anti-discrimination laws).

The bill also prohibits private employers from using as a defense that an employee exercised one of the constitutional rights listed above within the scope of his or her employment. But the effect of this provision is unclear in the context of the First Amendment's free speech protections. Under case law, the First Amendment does not protect an employee's speech made within the scope of employment (see BACKGROUND). It is therefore unclear whether case law bars employees from bringing these claims in the first place or the bill would permit them to proceed.

Under current law and the bill, if an employee sues his or her employer under this provision without substantial justification, the

employer can recover its costs and reasonable attorney's fees.

EFFECTIVE DATE: October 1, 2013

BACKGROUND

Speech Within the Scope of Employment

In *Perez-Dickson v. City of Bridgeport*, 304 Conn. 483 (2012), the Connecticut Supreme Court adopted the rule established by the U.S. Supreme Court in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), that when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. In *Schumann v. Dianon Systems, Inc.*, 304 Conn. 585 (2012), the court expanded on its ruling in *Perez-Dickson* to apply the *Garcetti* rule to private employees as well as public employees.

In these cases, the court applied the *Garcetti* rule to claims under the statutory provisions the bill addresses (CGS § 31-51q) based on First Amendment grounds only. The court did not rule on whether the state constitution's speech provisions should be interpreted differently than the First Amendment's or whether a claim brought on state constitutional grounds would be barred by the *Garcetti* rule.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 6 (04/19/2013)